IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Public Professional and Maintenance Employees Union,
Local 2003

Union

-and-

Black Hawk County, Iowa

Employer

ARBITRATOR:	Christine D. Ver Ploeg
DATE & PLACE OF HEARING:	March 13, 2012 Black Hawk County Courthouse Waterloo, Minnesota
DATE OF AWARD:	March 19, 2012

ADVOCATES:

For the Employer
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INTRODUCTION

This interest arbitration has been conducted pursuant to Iowa's Public Employment Act, Section 20.22. The Public Professional and Maintenance Employees Union (hereinafter Union) is the exclusive representative of members of Local 2003, Unit 3, who are employed by Black Hawk County, Iowa (hereinafter County). The Union and the County have engaged in contract negotiations and have agreed on all but the following items. The parties agree that these matters are now properly before this arbitrator for decision.

ISSUES

Under Iowa's Public Employment Act, Section 20.22, the arbitrator has the authority to select from either party's offer on each issue at impasse. The remaining issues at impasse[1] are:

1. Leaves of Absence, Article 6 (Leaves of Absence) and Article 11 (Funeral Leave)
2. Shift Differential, Article 9 (Hours of Work & Overtime)
3. Overtime, Article 9 (Hours of Work & Overtime)
4. Evaluations, Article 15 (Evaluations)
5. Insurance, Article 16 (Insurance)
6. Wages, Article 14 (Job Classifications and Wages)

The parties and this arbitrator met for a hearing on these matters on March 13, 2012, at which time the parties agreed to extend the deadline for the arbitrator's award from the statutory deadline of March 15 to March 28, 2012. Following the hearing the record was closed.

STATUTORY FACTORS

Iowa Code Section 20.22 provides as follows: The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contract.

[1] On March 7, 2012 the Union withdrew the issue of staff reduction procedures.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classification involved.
c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

ANALYSIS

Generally

The two primary bases for decision in any interest arbitration are:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table. Although this determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.

(2) Seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

These comparisons in turn entail a two-fold analysis. First, arbitrators consider an employer's ability to pay. The County has not raised an issue of inability to pay, although it asserts that as stewards of the public purse it must always exercise fiscal responsibility.

If the evidence demonstrates that at least some financial improvement is possible, arbitrators next consider the comparability data. This step requires the arbitrator to evaluate the parties' proposals in two contexts: (1) considering the wages, benefits, and other cost items this employer gives to its other employee groups (internal comparables); and (2) considering what comparable employers provide to similar employees (external data).

The preceding analysis has been applied in making the following awards on the issues in this case.

Issue 1: Leaves of Absence, Article 6 (Leaves of Absence) and Article 11 (Funeral Leave)

Union position.

Article 6 (Leaves of Absence), Section 6: Add the following two sections to expand the use of FMLA:

E. Qualifying military exigency

F. 26 weeks special leave for care of a serious injury or illness of a covered military service member.

Article 11 (Funeral Leave), Section 3: Change the last sentence to read:

"Funeral leave shall commence on a day designated by the employee, provided that the day of the funeral or memorial service falls within that period."

County Position.

Article 6 (Leaves of Absence), Section 6, FMLA: Make the following changes:

- Add "with completed documentation as specified on appropriate DOL formatted forms" to the first sentence.
- Add to the uses of FMLA in the first paragraph a sub-part E to read:

  E. Qualifying Military Exigency

  And add the following below sub-part E

  "Twenty-six (26) weeks of unpaid leave during any twelve (12) month period:

  A. to care for a covered service member with a serious injury or illness.
- Add "However, in the case of the personal illness of the employee, the Employer may require the use of accumulated paid sick leave for the FMLA."
- Delete: The Employer may not designate leave taken pursuant to the Agreement which was not required under the FMLA as FMLA leave.
- Delete "the twelve (12) weeks of" FMLA leave in the second to the last and last paragraphs. Replace with "any approved" FMLA leave.

Discussion and Decision

Military related FMLA leave and leave request documentation

There is no apparent dispute as to the appropriateness of including provisions regarding the use of FMLA in case of military exigency. The parties' proposals seem consistent.

Funeral leave: The parties do disagree regarding the Union's proposal to change the start of funeral leave use to a day designated by the employee. **The Union** submits that its proposal—which does not change the number of days of leave to which an employee is entitled—addresses scheduling problems that now arise because of the growing number of cremations and distant

deaths that can cause funeral or memorial services to be held well after a death. The Union submits that its proposal is a modest attempt to address today's changed circumstances.

The County submits that the current contract language already ensures an employees' ability to attend a funeral, regardless of any delay in its being scheduled. The County protests that changing this negotiated language would simply permit an employee to manipulate funeral leave in tandem with his or her regularly scheduled days off.

Eligibility for FMLA leave: The parties also very much disagree regarding the County's proposal that the Employer may require an employee to exhaust all of his or her paid sick leave benefits before utilizing FMLA leave. **The County** submits that this proposal is eminently reasonable; paid sick leave is designed to address an employee's own illness or injury and should be used for its intended purpose rather than saved while the employee goes on FMLA leave. **The Union** strongly protests this proposal, noting that this Union—unlike other unions—took advantage of the opportunity to negotiate how in members' FMLA leave would be implemented. The County should not now be allowed to alter those terms. Employees are entitled to different types of leave per the FMLA and per the Agreement, and they have specifically negotiated the ability to select among the leaves for which they qualify to determine how to cover their medically related absences. There is no basis for now altering those rights.

Decision: Under Iowa law an interest arbitrator must choose between the parties' proposals on each issue at impasse. I do agree that there is no evidence that the Union's expressed concerns regarding funeral leave are not already addressed by the existing contract language which states, "Funeral leave shall commence no later than the day after the death of the employee's relative, *provided that the day of the funeral falls within that period."* (Emphasis added). Nevertheless, this is not a cost item nor does it pose serious problems for the County. More important is the "designation and substitution" language by which the Union has negotiated its employees' ability to choose how to utilize sick leave in conjunction with FMLA leave. The County has failed to offer a compelling reason or a *quid quo pro* to rescind this significant language.

The Union's proposal regarding leaves of absence is adopted.

Issue 2: Shift Differential, Article 9 (Hours of Work & Overtime)

Union position.

Article 9 (Hours of Work & Overtime), Section 3: Change the section, Shift Differential, to read as follows;

An employee shall be paid the appropriate shift differential for each shift that qualifies for shift differential in addition to their regular straight time hourly rates:

a. Regular second shifts starts between 11:30 a.m. and 9:59 p.m. – 40 cents

b. Regular third shift starts between 10:00 p.m. and 5:59 a.m. – 25 cents

c. Swing shift which changes between different shifts within a pay period – 50 cents

County Position. No Change

Discussion and Decision

The Union proposes to include all job classifications in an expanded time range for a shift differential of 40 cents, and to increase the swing shift as a change in shifts during a pay period from 25 cents to 50 cents. It argues that there is no good reason for one classification to receive a shift differential beginning at 11:30 a.m. and another at 2:00 p.m., and that doing so can be unfair. For example, a building cleaner was recently hired to work 1:00 p.m. to 9:00, a one-hour earlier start and stop time which renders her ineligible for a shift differential. There should be one combined time span as a matter of equity and for ease of administration. The Union also seeks to repair damage that has resulted from a negotiability ruling and related schedule changes whereby bargaining unit members' scheduled hours are changed to cover co-worker absences yet they are not paid the swing shift differential.

The County argues that there is no compelling reason to alter the status quo. This is a cost item that financially affects the Employer's right to make temporary transfers.

Decision: The Union's proposed combined time span of 10-1/2 hours is excessive for purposes of granting a shift differential for that period of time, and therefore this proposal is not granted.

Issue 3: Overtime, Article 9 (Hours of Work & Overtime)

Union position.

Article 9 (Hours of Work & Overtime), Section 6: Add the following to the third paragraph of Section 6, Overtime:

> Any overtime shall first be offered as volunteer overtime to employees in that job classification on a last worked-last selected basis. If there is an insufficient number of volunteers, the Employer shall select staff for involuntary overtime on a rotational basis beginning with the least senior employee of the affected shift.

County Position. No Change

In 1995 the parties agreed to a rotational basis for assigning overtime. However, 10 years later the Iowa PERB interpreted that language as permissive on the premise that it restricted management's right to determine schedules or staffing. With this ruling the County eliminated rotational overtime so that the contract now simply says that "The Employer will make *every reasonable effort* to ensure the equitable distribution of overtime in accordance with qualifications and ability.' (Art. 9, Sec. 6, emphasis added).

The Union submits that the Iowa PERB's ruling on this issue was probably the result of its getting lost in the midst of deciding a total of 43 issues involving 20 contract articles and 5 fact-finding positions, rather than on its merits. That aside, the Union submits that this arbitrator does have the authority to award this proposal to return to the parties' prior successful practice, and should do so for three reasons. (1) Iowa law permits the arbitrator to award this as one of the "peculiar factors" criteria, and because the Union isn't really proposing new language but is instead placing this directive in its proper section. (2) Conditions have changed since the 2006 elimination of rotational overtime. Where before there had been one practice for distributing overtime, different job classifications within the same bargaining unit now have different practices. (3) Comparability evidence supports filing in this language gap.

The County strenuously protests this proposal on the ground that it has already been determined to constitute a permissive subject to bargaining.

Decision: The Union's proposal is reasonable and the County offered no evidence or argument to the contrary. The County has simply stood its ground on PERB's determination that it does not have to discuss this subject. The County is correct; there are other avenues to appeal this

determination and arbitration is not one of them. The Union's proposal must be rejected. Nevertheless, it is hard to understand the County's intransigence in refusing to return to a practice that seems to have worked so well, is on its face fair and reasonable, and has such an impact upon employee morale.

Issue 4: Evaluations, Article 15 (Evaluations)

Union position.

Evaluations, Article 15 (Evaluations): Change the last sentence to read:

Employees may grieve the results of an unsatisfactory evaluation.

County Position. No Change

Under current contract language employees who are at the top of the salary schedule have no right to grieve an unsatisfactory performance evaluation, and under current law they also have no right to grieve discipline or discharge.

The Union argues that employees' inability to grieve an unsatisfactory evaluation is eminently unfair. This proposal should be adopted for three reasons: (1) This proposal addresses the employees' loss of the right to grieve discipline or discharge by at least enabling them to challenge an unfair evaluation which provided the basis for that action. It also addresses changed circumstance, in that the County is improperly using sick leave usage as a factor in evaluations. (2) This proposal will not affect wage step increases based on performance; those will still require "an overall rating of satisfactory or higher." (3) The Union has repeatedly attempted to bargain this issue with the County, but its long standing and vigorous efforts have been futile. The County not only has never offered a counter-proposal, it has been unwilling even to up-date current contract terms to make them consistent.

The County points to numerous prior neutral findings that have declined to adopt this proposal on the basis that the Union has failed to offer compelling reasons to do so. If the Union thinks that employees are being mistreated, it should produce evidence of a pattern of conduct that would demonstrate that the current process is, in fact, unfair.

Decision: The Union's frustration regarding this issue is understandable, particularly given the employees' loss of the right to grieve discipline and discharge. Nevertheless, an interest arbitrator must tread cautiously in awarding new language that one party has so clearly and

consistently rejected. Absent specific evidence of a failure of the current process, this proposal is not accepted.

Issue 5: Insurance, Article 16 (Insurance)

Union position.

Article 16 (Insurance), Section 1: No changes, except to the following plan benefits under the Preferred Provider Plan:

Prescription Drugs:	20% Generic up to $20 maximum per fill by employee
(No deductible):	30% Formulary up to $40 maximum per fill by employee
(Preferred Pharmacy):	40% Non-formulary up to $80 maximum per fill by employee

Delete: Lifetime Benefit Maximum $ 1,000,000

The Plan also includes the following provisions:

Change: "Dependent child coverage to age nineteen (19) or to age twenty-five (25) if a full-time college student

to read Dependent child coverage to age twenty-six (26)

County Position. No Change to Article 16, Section 1, except for the following;

Preferred Provider Plan

Deductible	$500 Single
	$ 1,000 Family
Co-Payment	$ 25 (per PPO Office Visit)
Prescription Drugs	lesser of $20 or 20% of gross Generic price
(no deductible)	lesser of $40 or 30% of gross Formulary price
(Preferred Pharmacy)	lesser of $80 or 40% of gross Non-formulary price
Out-of-Pocket Maximum	$ 1,000 Single
	$ 2,000 Aggregate Family
Delete: Lifetime Benefit Maximum	$ 1,000,000

	Non-Network Provider Provisions
Deductible	$ 1,000 Single
	$ 2,000 Family
Out-of-Pocket Maximum	$ 2,000 Single
	$ 4,000 Family

Discussion

The parties agree that federal law now requires elimination of the lifetime benefit maximum of $ 1M and increasing dependent child coverage to age twenty-six (26). Thus, those changes are awarded.

The issues in dispute concern the Union's proposal to change the drug provisions to match other County contracts and the County's proposal to increase the in-network and out of network deductibles, increase an employee's office co-pay from $20 to $25, change the drug provisions to provide for a dollar or % cap, and increase employee's out of pocket maximums.

The Union argues that the County's proposed changes represent a genuine financial hardship for members of this bargaining unit, which is comprised of the lowest paid employees in the County. The impact of doubling these employees' in-network deductibles would have a far greater impact upon them than upon those in more highly paid job classifications. Moreover, the County is self insured, and the evidence demonstrates that these employees are utilizing the insurance funds—which are healthy--to a lesser degree than other employee groups.

The County submits that other employee groups have agreed to health insurance provisions that have contributed to the viability of the fund. This bargaining unit should not be a free-rider on the sacrifices of those other groups.

Decision: The Union's proposal is adopted for reasons similar to Arbitrator Powers' analysis on this same issue regarding Unit 2 (Nurses). This unit is least able to afford the increased deductibles and co-pays that the County now proposes. Although the County's offer does not increase employee premiums, employees who did have a claim would be significantly affected. Moreover, the County's insurance fund is healthy. The County has failed to demonstrate that its proposed changes are warranted. The place to bring all employees under the same insurance terms is at the bargaining table.

Issue 6: Wages, Article 14 (Job Classifications and Wages)

Union position.

Article 14 (Job Classifications and Wages), Section 2, Hourly Wage Rates: Change to read:

> Reference is made here to Exhibit B, Labor and Trades Salary Schedule for the 2013 fiscal year which shall become effective on July 1, 2012, and shall remain in effect during the term of the Agreement. The 2013 fiscal year schedule shall be an increase of forty cents ($. 40) over the previous year's fiscal year salary schedule. In addition, employees eligible to receive an in-grade pay increment shall do so pursuant to Article 25 of this Agreement.

County Position. $ .28 per hour wage increase across the board, plus steps.

Discussion

The parties agree that all employees will receive a step increase if eligible. It is also apparent that this increase applies to very few members of this bargaining unit, as most are already at the top step. The issue at hand involves which parties' proposed wage increase should be awarded. The Union seeks a $ .40 (2.84%) per hour increase; the County has offered $.28 (2%) per hour. Both parties submit that their proposed wage increase is supported by both internal and external data.

Decision: Although the County has not claimed an inability to fund a wage increase, it is true that an interest arbitrator must always remain mindful of the "interests and welfare of the public" in making any award. This award of the Union's proposal is the result of balancing the following comparability evidence.

Internal comparability: The County seeks to maintain consistency among its different employee groups, and offered evidence that past wage increases throughout the County do, indeed, support such consistency. The Union submits that the County's reliance on internal settlement trends is nothing more than pattern bargaining, which it strenuously objects to having imposed upon it.

Regardless whether the evidence of internal comparability reflects pattern bargaining or "whipsawing" or neither, I find that a $.40 per hour raise across the board to members of this

bargaining unit is consistent with the dollar amounts of the raises awarded to other County employees, and is consistent with that awarded by Arbitrator Powers for the other Union members with whom these employees work: Unit 2 (Nurses).

External comparability: Arbitrator Powers noted that the only true comparable for these employees, the vast majority of whom work at the Country View Nursing Facility, is Dubuque's Sunnycrest Manor—the only other such facility remaining in the state. Considering this comparison in conjunction with other state-wide and top ten county wage increases, I find that a $ .40 per hour wage increases will maintain these employees' relative standing to a better degree than will the County's proposed $. 28 increase.

SUMMARY OF AWARD

Under Iowa's Public Employment Act, Section 20.22, the arbitrator has the authority to select from either party's offer on each issue at impasse. The following is hereby awarded:

1. Leaves of Absence, Article 6 (Leaves of Absence) and Article 11 (Funeral Leave)
   The Union's proposal is adopted
2. Shift Differential, Article 9 (Hours of Work & Overtime)
   No change
3. Overtime, Article 9 (Hours of Work & Overtime)
   No change
4. Evaluations, Article 15 (Evaluations)
5. No change
6. Insurance, Article 16 (Insurance)
   The Union's proposal is adopted
7. Wages, Article 14 (Job Classifications and Wages)
   The Union's proposal is adopted

March 19, 2012

Christine D. Ver Ploeg